In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 78 - 166

CHALIN OCTAVE PEREZ, ET AL.,
Petitioners

versus

MERLIS J. BROUSSARD, ET AL.,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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Respondents pray that this Court deny issuance of a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit rendered May 12, 1978.

QUESTIONS PRESENTED

1. Whether the Plaquemines Parish School Board's change from ten single-member districts to at-large elections is a voting change contemplated by Section 5 of the Voting Rights Act of 1965.

2. Whether the Court of Appeals and the District Court clearly erred in holding that the purported Section 5 submission by the School Board in 1970 was properly found by the Attorney General to be premature and therefore not an effective Section 5 submission.

3. Whether the Court of Appeals and the District Court clearly erred in the factual determination that the Attorney General responded within 60 days to the School Board's purported Section 5 submission of its change to at-large elections.

STATEMENT OF THE CASE

This is an action by black plaintiffs on their own behalf and on behalf of black voters of Plaquemines Parish challenging the Plaquemines Parish School Board's change to at-large election of its members on June 11, 1970, as inoperative because of the School Board's failure to obtain the preclearance required by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970). In 1970, the Plaquemines Parish School Board attempted to submit their change to at-large voting to the Attorney General of the United States pursuant to Section 5. Within the time allowed, the Attorney General responded that the Plaquemines Parish School Board's purported change to at-large election was without authority in state law due to the Attorney General's outstanding objection to Louisiana legislation which purported to enable school boards to change their method of elections to at-large voting arrangements. This legislation, Louisiana Act 561 of 1968, La. Rev. Stat. § 17:71, and the effect of the Attorney General's Section 5 objection to it was considered by this Court in *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 at 639, note 6, 96 S.Ct. 1083 at 1085, 47 L.Ed.2d 296 (1976). This court concluded that the objection to the enabling statute deprived the East Carroll Board of authority to change the at-large elections and that therefore the plan in question must have been a court-ordered plan.

The Attorney General eventually lifted his objection to Act 561 of 1968, but upon the explicit understanding, supported by an official opinion of the Attorney General of Louisiana, that individual school boards would thereafter submit their changes to at-large elections to Section 5 scrutiny. After the objection to the enabling legislation was lifted, the Attorney General wrote to the Plaquemines Parish School Board and requested that they submit their change to at-large elections. The School Board refused and private parties, your Respondents herein, filed suit to compel that submission.

The Petitioner School Board contended below:

1. That they need not submit their change to Section 5 scrutiny on the ground that they had done so earlier (when the objection to the enabling statute was in force), and;

2. That the Attorney General failed to indicate his response to the purported submission within the 60 day time limit.

The District Court and a unanimous Court of Appeals found that these contentions were not only without merit but also insubstantial and frivolous.

REASONS FOR DENYING THE WRIT

In an attempt to gain this Court's attention, Petitioners have seriously over simplified and thereby misstated the question presented by this case. In this case, the Attorney General simply made the determination that since at the time of

the purported submission there was no valid state enabling legislation, the Plaquemines Parish School Board had no authority to change to a scheme of at-large elections. Thus, the purported submission was premature and did not present a case or controversy for resolution by the Attorney General of the United States, who under Section 5 is established as an alternative forum to the United States District Court for the District of Columbia. The question defendant urges, that is, whether the Attorney General's failure to object amounts to an approval under Section 5, is simply not the question presented by the facts of this case. Rather the questions presented and which were resolved by the Court of Appeals and District Court below, involve routine implementation of this Court's decision and factual determinations.

The only issue presented by the facts of this case which is of a magnitude that would warrant review, the question of whether redistricting changes are covered by the Voting Rights Act, has already received a determination by this Court. *Georgia v. United States*, 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973).

CONCLUSION

The decision of the United States Court of Appeals and the District Court below is entirely consistent with prior decisions of this Court, and the case presents no question of the magnitude to justify the issuance of a writ of certiorari. For these reasons Respondents respectfully urge that this Court expeditiously deny the petition for writ of certiorari.

Respectfully submitted,

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CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Respondents and a member of the Bar of the United States Supreme Court, do hereby certify on this 9th day of November, 1978, I served copies of the foregoing Response to Petition for Writ of Certiorari on the attorney of record for petitioners herein, Mr. Sidney W. Provensal, Jr., 611 Whitney Building, New Orleans, Louisiana, 70130 and upon Mr. Drew S. Days, III, Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530 by mailing to them three copies of same, postage prepaid.

STANLEY A. HALPIN, JR.
Counsel for Respondents